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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/724,069

12/01/2003

Jim Lindemulder

2409 US

1741

38392

7590

08/16/2005

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EXAMINER

UPTON, CHRISTOPHER

ART UNIT

PAPER NUMBER

1724

DATE MAILED: 08/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/724,069

Applicant(s)

LINDEMULDER, JIM

Examiner

Christopher Upton

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

1. Claims 2 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 depends from itself. The claim is considered to depend from claim 1 for purposes of examination.

2. Applicant's election without traverse of Species III, claim 8 and generic claims 1-3, 5 and 6 in the reply filed on May 30, 2005 is acknowledged. However, since the embodiment of species I, claim 4, was found during examination, and the embodiment of species II, claim 7 appears to be obvious over the prior art found during examination, the species have been recombined and all claims examined.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1724

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Ellis.

Ellis discloses a sewer system protector having an elongated casing with a filler and a depending skirt, which are water permeable, as claimed.

5. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Chinn et al.

Chinn, in figures 6 and 7, discloses a sewer system protector having an elongated casing with a filler and a depending skirt, which are water permeable, as claimed.

6. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis or Chinn et al.

Claims 2 and 3 differ from Ellis and Chinn in recitation of the materials that the casing and filler are made of.

With respect to claim 2, it is submitted that polyethylene is a well known fabric having properties similar to polypropylene, which is disclosed by Chinn, and may obviously be used as a geosynthetic material, as disclosed by Chinn, and therefore would have been an obvious known alternative material for one skilled in the art. It is further submitted that polyester, burlap and tarpaulin are also well known, and therefore obvious alternatives failing to patentably distinguish over Ellis or Chinn.

With respect to claim 3, It is submitted that Chinn discloses coconut fiber. It is further submitted that the materials recited are well known porous materials, and would therefore have been obvious for one skilled in the art to use as the unspecified porous material of Ellis.

7. Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis or Chinn in view of Harris et al.

Claim 5 differs from Ellis and Chinn in recitation of the casing being annular with a radial skirt. It is known to configure a drain filter in such a fashion, as exemplified by Harris. It would therefore have been obvious for one skilled in the art to configure the drain filters of Ellis or Chinn to have an annular casing with a radial skirt, to provide a system with an overflow in case of clogging.

With respect to claim 6, it is submitted that Harris discloses grommets. With respect to claims 7 and 8, it is submitted that it would have been obvious to make the casing and filler either impermeable and resilient or permeable, as Harris discloses a resilient overflow wall of foam rubber, which obviously may be either permeable (open-cell) or impermeable (closed cell); and Ellis and Chinn disclose permeable casings and fillers.

8. Claims 1 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Page.

Page, in figure 3, discloses a sewer system protector having an annular casing with a filler and a depending skirt, which are water permeable, as claimed.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Other references of interest include Singleton, Isaacson, Logue, Strawser, and Middleton.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Upton whose telephone number is 571-272-1169. The examiner can normally be reached on 7:30-5:00, off every other Monday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher Upton
Primary Examiner
Art Unit 1724